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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,886	03/09/2004	Herbert C. Preul	PREUL-02A	2886

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EXAMINER

RIVELL, JOHN A

ART UNIT PAPER NUMBER

3753

DATE MAILED: 05/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/796,886

Applicant(s)

PREUL, HERBERT C.

Examiner

John Rivell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 3/9/04 (application).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>03092004</u> . | 6) <input type="checkbox"/> Other: _____  |

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 7-9 are rejected under 35 U.S.C. §102 (b) as being anticipated by Higgins (U.S. Pat. No. 403,106).

The patent to Higgins ('106) discloses a “wastewater source control system for use with a sewer service line (read at lines d feeding “detention tank A, leading to line f which leads to the sewer line in the street) conducting a flow of wastewater from a sewage line of a building to a sewer main, the wastewater source control system comprising: a flow control device (valve I) adapted to be installed in the sewer service line, the flow control device automatically closing in response to a backflow of wastewater and/or stormwater from the sewer main (in the street), through the sewer service line (at f) and toward the building, and the flow control device (valve I) automatically opening in response to a normal flow of wastewater from the building (from lines d), through the sewer service line and into the sewer main (in the street); a detention tank (tank A) disposed in the sewer service line upstream of the flow control device (valve I), the detention tank (A) detaining wastewater in response to the flow control device (I) being closed and the wastewater draining from the detention tank (A) upon the flow control device (I) subsequently opening” as recited.

Regarding claim 6, in Higgins ('106), “the detention tank (A) and flow control device (valve I) are disposed near an upstream end of the sewer service line” as recited

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because, as recited in claim 7, "the detention tank (A) and flow control device (valve I) are located inside a perimeter of the building" as shown by foundation wall D

Regarding claims 8 and 9, in using the device of Higgins ('106) one necessarily performs a "method of reducing wastewater in a sewer main (in the street) receiving the wastewater from a sewer service line (lines d, tank A, line f) connected to a sewage line in a building (represented by foundation wall D), the method comprising: providing a flow control device (valve I) connected in the sewer service line and a detention tank (A) connected in the sewer service line upstream of the flow control device (I); automatically closing the flow control device (I) in response to a backflow of stormwater from the sewer main (in the street), through the sewer service line (at f) and up to the flow control device (I); and detaining the wastewater from the building in the detention tank (A) while the flow control device (I) is closed" as recited.

Regarding claim 9, in using the device of Higgins ('106), one necessarily further performs a method "further comprising: automatically opening the flow control device (I) in response to a flow of stormwater away from the flow control device (I toward the street); and automatically draining the wastewater detained in the detention tank (A) in response to the flow control device (I) being open" as recited.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higgins ('106).

The patent to Higgins ('106) discloses all the claimed features with the exception of having the "flow control device disposed near a downstream end of the sewer service line (claim 2) nor the "detention tank disposed near a downstream end of the sewer service line (claim 3). The "detention tank (A) is disposed near an upstream end of the sewer service line (claim 3).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to physically relocate the valve element I and/or detention tank A to any physical location in the sewer service line of the building feeding the sewer main in the street , since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70. Here, relative to the physical location of the equivalent parts in Higgins ('106), the claims merely require a different physical location yet mechanically connected to the same drainage line from the building.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Higgins ('106) in view of Smith.

The patent to Higgins ('106) discloses all the claimed features with the exception of having "a service box" with the flow control device at valve I located therein.

The patent to Smith discloses that it is known in the art to employ at a "service box" A including a hinged top cover h, a valve device F located therein preventing backflow of sewerage liquid from the sewer main in the street to the service line of the building for the purpose of containing the valve in a serviceable location for cleaning and/or repair.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Higgins ('106) a "service box" encasing the

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valve element I therein for the purpose of containing the valve in a serviceable location for cleaning and/or repair as recognized by Smith.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Rivell whose telephone number is (571) 272-4918. The examiner can normally be reached on Mon.-Thur. from 6:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene can be reached on (571) 272-4930. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
John Rivell  
Primary Examiner  
Art Unit 3753

j.r.